

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN ALBERT GILLIS,

Petitioner,

v.

Civil No. 2:10-CV-14249
HONORABLE PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

KENNETH McKEE,

Respondent,

_____ /

OPINION AND ORDER DENYING PETITIONER'S
MOTION FOR SUMMARY JUDGMENT

Petitioner John Albert Gillis, an inmate at the Gus Harrison Correctional Facility in Adrian, Michigan, has filed a *pro se* application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that he is confined in violation of his constitutional rights. Before the Court is petitioner's motion for summary judgment. For the reasons stated below, the motion for summary judgment is **DENIED**.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Sanders v. Freeman*, 221 F. 3d 846, 851 (6th Cir. 2000)(quoting Fed. R. Civ. Proc. 56(c)). The summary judgment rule applies to habeas proceedings. *See Harris v. Stegall*, 157 F. Supp. 2d 743, 746 (E.D. Mich. 2001)(citing to *Hauck v. Mills*, 941 F. Supp. 683, 686-687 (M.D. Tenn. 1996)). However, a federal district court should not enter a summary judgment in a habeas

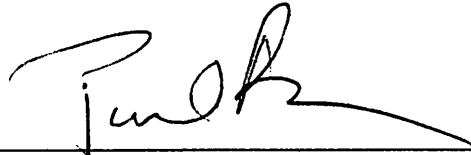
case if the pleadings or papers present a genuine issue of fact. *United States ex. rel. Johnson v. De Robertis*, 718 F. 2d 209, 211 (7th Cir. 1983).

Respondent filed a response to the petition for writ of habeas corpus on April 29, 2011, in which he urges that petitioner's claims be denied. Petitioner filed a reply to the answer on June 13, 2011, urging this Court to grant the writ. In the present case, a genuine issue of fact exists as to whether or petitioner's constitutional rights were violated. Thus, the Court will deny petitioner's motion for summary judgment.

II.

IT IS HEREBY ORDERED that petitioner's motion for summary judgment [Dkt. # 14] is **DENIED.**

SO ORDERED.

A handwritten signature in black ink, appearing to read 'Paul D. Borman', written over a horizontal line.

PAUL D. BORMAN
UNITED STATES DISTRICT COURT

DATED: 3-7-12